

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DR. THOMAS J. WYLY

Plaintiff,

v.

THE INTERNATIONAL
FOUNDATION FOR EDUCATION
AND SELF-HELP and THE LEON H.
SULLIVAN FOUNDATION,

Defendants.

FILED
IN CLERKS OFFICE

2004 JUN -7 P 3:15

U.S. DISTRICT COURT
DISTRICT OF MASS.

Case No. 04-11151 EFH

THE LEON H. SULLIVAN FOUNDATION'S MOTION TO DISMISS

In accordance with Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), The Leon H. Sullivan Foundation (“LHS Foundation”) submits this Motion to Dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted. The LHS Foundation has virtually no contact with Massachusetts and no relationship with Plaintiff Thomas Wyly. Thus, this Court may not exercise personal jurisdiction over the LHS Foundation in a manner consistent with either the Massachusetts long-arm statute or the Due Process Clause of the Constitution. Furthermore, Plaintiff’s claim under Mass. Gen. Laws chapter 93A is nothing more than a restatement of Plaintiff’s breach of contract claim. Allegations for a breach of contract cannot support a chapter 93A claim. Accordingly, as set forth in more detail in the attached brief, the Court should dismiss Plaintiff’s Complaint against the LHS Foundation without prejudice for lack of personal jurisdiction. Moreover, the Court should dismiss Plaintiff’s claim under chapter 93A for failure to state a claim.

Respectfully submitted, this 7 day of June, 2004.

THE LEON H. SULLIVAN FOUNDATION

By its attorneys:


Michael Rosen, Esq. BBO# 559954
Elizabeth Heinrich, Esq. BBO #648090
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

OF COUNSEL:

R. Daniel Beale
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
(404) 527-8489

Attorneys for Defendant The Leon H. Sullivan Foundation

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2004, I served a copy of the foregoing by mail / hand / email / Federal Express to counsel for Plaintiff, David A. Browne, Sherin and Lodgen, LLP, 100 Summer Street, Boston, MA 02110 and counsel for the International Foundation for Education and Self Help, Marie F. Mercier, Kotin Crabree & Strong, LLP, One Bowdoin Square, Boston, MA, 02114.


Elizabeth Heinrich

CERTIFICATE OF CONFERENCE

I, Elizabeth Heinrich, in accordance with Rule 7.1(A)(2), certify that I conferred with counsel for plaintiff by phone at approximately 10:15 a.m. on June 7, 2004 and that we were unable to reach agreement as to the relief sought by this motion.


Elizabeth Heinrich